IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10122 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE A.R.DAVE

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

@

CO-OPERATIVE BANK OF AHMEDABADLTD.

Versus

REGISTRAR OF CO-OPERATIVE SOCITIES

Appearance:

1. Special Civil Application No. 10122 of 2000

MR MB GANDHI for Petitioner No. 1-4

MR VM PANCHOLI, AGP, for Respondent No. 1

MR TS NANAVATI for Respondent No. 2

CORAM : MR.JUSTICE A.R.DAVE

Date of decision: 31/07/2002

ORAL JUDGEMENT

The petitioners have challenged the validity of an order dated 2.8.2000 passed by the Registrar,

Co-operative Societies, State of Gujarat.

2. Learned advocate Shri M.B. Gandhi appearing for the petitioners has submitted that petitioner No. 1 is a co-operative bank, whereas petitioners Nos. 2, 3 and 4 are officers of petitioner No. 1 bank. It has been submitted by him that a show-cause notice under the provisions of sec. 76B of the Gujarat Co-operative Societies Act, 1961 (hereinafter referred to as 'the Act') had been given to petitioner No. 1 bank calling upon it to show cause as to why action should not be taken against the said petitioner under the provisions of the Act as it had committed certain irregularities referred to in the said notice.

3. In pursuance of the notice issued to petitioner No. 1, reply was given by petitioner No. 1 and a representative of petitioner No. 1 was also heard by Mr. Fakir, Jt. Registrar (Audit). It has been submitted by the learned advocate that sufficient explanations were given so as to satisfy the authority that no action was warranted in pursuance of the show-cause notice referred to hereinabove. It was brought to the notice of the said officer that in fact the petitioner-bank had not committed any irregularity.

4. Ultimately, by the impugned order dated 2.8.2000 passed by Shri R.N. Shah, Registrar, Co-operative Societies, the petitioner bank was directed to remove petitioners Nos. 2, 3 and 4 as the said officers had failed in performance of their duties.

5. It has been submitted by learned advocate Shri Gandhi that, in fact, no irregularity had been committed by the said petitioners. He has drawn my attention to the fact that in the notice it has been stated that a new account ought not to have been opened without depositing cash. In the instant case, a new account was opened by depositing cheques and the said action was considered to be violative of the guidelines given by the Reserve Bank of India. Moreover, the allegation was that Shri S.J. Patel, who was the power-of-attorney holder of 4 persons named in the said show-cause notice, was not introduced by any person. According to learned advocate Shri Gandhi, it was not necessary to deposit cash at the time of opening a new savings bank account and Shri S.J. Patel, who was the power-of-attorney holder of 4 persons named in the notice was, in fact one of the directors of petitioner No. 1 bank. He has submitted that the director of petitioner No.1 bank required no introduction by an outsider and, therefore, the officers of the bank

rightly acted as per statement made by Shri S.J. Patel, Director of the bank, that he himself was S.J. Patel.

6. It has been submitted by the learned advocate appearing for the petitioners that the impugned action taken by the respondent is bad because the notice was issued under the provisions of sec. 76B of the Act whereas the impugned order has been passed under the provisions of sections 44 and 45 of the Multi-State Co-operative Societies Act, 1984. It has been submitted by him that no show-cause notice was issued to the petitioners under the provisions of Multi-State Co-operative Societies Act, 1984. According to the learned advocate, without issuance of any notice under the provisions of the said Act, the respondent could not have taken action under that Act. It has been thus submitted that there was total non-application of mind on the part of the respondent. The purpose behind issuance of show-cause notice is to give an opportunity to the concerned person to represent his case before the concerned authority so that the concerned authority can know the stand of the person or party before taking final action. In the instant case, the final action was taken under the provisions of the Multi-State Co-operative Societies Act without giving an opportunity of being heard under the provisions of the said Act. It has been, therefore, submitted by him that the impugned order is bad in law.

7. Thereafter the learned advocate has submitted that in pursuance of the show-cause notice a representative of the bank was heard by Mr. Fakir, Jt. Registrar (Audit), whereas final decision was taken by Shri R.N. Shah, Registrar, Co-operative Societies. It has been submitted by him that once a person gives hearing, the person giving hearing should take the final decision because he is the person, who has heard the concerned party and has applied his mind. In the instant case, the one who passed the final order had not heard the petitioners. In support of the submission that the person giving hearing should decide the matter, the learned advocate has cited a judgment delivered by the Hon'ble Supreme Court in the case of Gullapalli Nageswara Rao & ors. v. A.P. State Road Transport Corporatin & anr., AIR 1959 SC 308. It has been, therefore, submitted that the impugned order is violative of the principles of natural justice.

8. It has been also submitted by the learned advocate that petitioners Nos. 2, 3 and 4 were not given any notice under the provisions of the Multi-State

Co-operative Societies Act, 1984. Without hearing the said petitioners, the respondent has directed petitioner No. 1 to remove respondents Nos. 2, 3 and 4. By virtue of the impugned order, principle of natural justice has been violated because petitioners Nos. 2, 3 and 4 did not get any opportunity of being heard by the respondent before the impugned order was passed and by virtue of the impugned order, petitioner No. 1 has been directed to remove petitioners Nos. 2, 3 and 4 from service.

9. So far as the facts of the case are concerned, the learned advocate has submitted that even the reasons stated in the order are not just and proper. It has been submitted by him that it was open to the petitioners to open a new account with cheques, i.e., without cash. According to him, it was for the bank to decide whether cheque should be accepted for the purpose of opening a new account. He has also drawn my attention to a letter written by the Reserve Bank of India to the effect that it is not always mandatory to open a new account with deposit of cash. It has been also submitted by him that the officers of the bank did not commit any mistake or blunder by not asking a director of the bank to get himself introduced by somebody. According to the learned advocate, staff of petitioner No. 1 bank was knowing Shri S.J. Patel, one of the directors of petitioner No.1 bank and therefore it was not necessary to get Shri S.J. Patel introduced by a stranger. The learned advocate has added that it would be absolutely absurd for respondents Nos. 2, 3 and 4 to ask for any identification from one of the directos of petitioner No.1 bank, under whom they were working.

10. It has been further submitted by the learned advocate for the petitioner that incorrect facts have been recorded with regard to instructions given by income-tax authority. The income-tax authority had given a direction to petitioner No.1 bank that S.B. Account No. 14256 should not be permitted to be operated. The said instruction was given on 18.4.1991, whereas the amount was withdrawn from the said account by one of the account holders on 13.6.1990. Thus, it has been submitted by him that there was no violation of the instructions given by the income-tax department. For this reason also, it has been submitted by the learned advocate that the impugned order is bad as, from the tenor of the impugned order, it appears that the officers of the bank had ignored the instructions given by the income-tax department.

11. Learned AGP Shri Pancholi appearing for the

respondent could not deny the fact that show-cause notice was issued under the provisions of the Act whereas the final action was taken under the provisions of the Multi-State Co-operative Societies Act, 1984. He could not even deny the fact that hearing was given by Shri Fakir, Jt. Registrar, whereas the final order was passed by Shri R.N. Shah, Registrar, Co-operative Societies, Gujarat State.

12. Learned AGP Shri Pancholi has, however, submitted that it would have been advisable to get a new account opened with cash, whereas the account was opened only with deposit of cheques. Moreover, it has been submitted by him that as per normal practice, a person should have been introduced by somebody else and that normal practice had not been followed and therefore some irregularities were committed.

13. It has been further submitted by the learned AGP that the impugned order has not bee passed in pursuance of the show-cause notice dated 22.12.98, which was issued under the provisions of sec. 76B of the Act. According to the learned AGP, the submission made by learned advocate Shri Gandhi that the show-cause notice was issued under the Act whereas final order was passed under the provisions of the Multi-State Co-operative Societies Act, 1984, is not correct. Of course, the learned AGP had to admit the fact that before passing the impugned order, no opportunity of being heard was given to the petitioners. He has drawn my attention to the fact that in the impugned order, the notice dated 22.12.98 has not been referred to and therefore it cannot be said that the impugned order has been passed in pursuance of the show-cause notice dated 22.12.98.

14. I have heard the learned advocates and have perused the impugned order and the notice referred to hereinabove. After hearing the learned advocates and upon perusal of the impugned order, it is clear that no show-cause notice was issued to any of the petitioners under the provisions of the Multi-State Co-operative Societies Act, 1984. Even if one looks at the provisions of sec. 44 and 45 of the said Act, they pertain to the Chief Executive and the powers and functions of the Chief Executive. This fact denotes that there is non-application of mind on the part of the authority, which passed the impugned order. It is also pertinent to note that by virtue of the impugned order, petitioner No. 1 bank has been directed to remove petitioners Nos. 2, 3 and 4 from service. In my opinion, without giving any hearing to petitioners Nos. 2, 3 and 4, the respondent

could not have given any direction to petitioner No.1 bank with regard to termination of their services. The said action on the part of the respondent is in violation of the principles of natural justice. When a final direction has been given to petitioner No.1 for terminating service of petitioners Nos. 2, 3 and 4, who are vitally affected by virtue of the impugned order, at least the respondent authority ought to have heard them. In the circumstances, it is very clear that the impugned order has been passed in violation of the principles of natural justice.

15. There appears to be some substance in what has been submitted by learned advocate Shri Gandhi appearing for the petitioners that it was open to the petitioners to start a new S.B. Account without deposit of cash. Even with regard to introduction of the director of petitioner No. 1 bank, one cannot say that it was necessary to get the director introduced by an outsider if petitioners Nos. 2, 3 and 4 were personally knowing the director. I do not propose to go into the merits of the matter as I keep it open to the respondent authority to initiate fresh action if the authority thinks it necessary to do so.

16. For the reasons stated hereinabove, in my opinion, the impugned order cannot be sustained and, therefore, it is hereby quashed and set aside. Needles to say that it would be open to the authority to take appropriate action in accordance with law if, after due deliberation, he thinks it proper to initiate some action.

The petition is allowed accordingly. Rule is made absolute with no order as to costs.

(A.R. Dave, J.)

(hn)